IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 34077 of 2007(F)

PETITIONER:

EVERSHINING CHARITABLE TRUST,
POOKOTTUR, MALAPPURAM DISTRICT, REPRESENTED BY ITS CHAIRMAN, S.ALI, S/O. ALAVI, AGED 58 YEARS,
SRAMBIKKAL HOUSE, POOKOTTUR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU PAUL

RESPONDENTS:

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1. THE DISTRICT TOWN PLANNER, MALAPPURAM.

2. THE MALAPPURAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, MALAPPURAM.

BY ADV. SRI.BABU S. NAIR (SC)
GOVERNMENT PLEADER SRI.MUHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 34077 of 2007

Dated this the 10th day of December , 2007

JUDGMENT

The petitioner, a charitable trust, is aggrieved by Exts.P3 and P4 orders passed respectively by the District Town Planner, Malappuram and the Secretary of the Malappuram Municipality turning down the petitioner's request for permission to construct a residential apartment on their property covered by Wakf Deed No.1161/2003 of S.R.O. Malappuram. The District Town Planner has refused to grant permission on the reason that as per the notified town planning scheme, the property in question falls within the area of paddy field.

2. A statement has been filed by the District Town Planner, justifying Exts.P3 and P4, which is only a consequential order. It is contended in the statement as follows:

> " 2. The Municipal Secretary vide letter No.BA 339/06-07 dated 10.1.2007 forwarded the application to the District Town Planner for getting the opinion of the town planner as the site of the proposed construction falls within the area zoned for paddy fields as per the Government approved Master Plan for Malappuram Municipality.

> 4. The Honourable High Court of Kerala in the judgment passed on 7.11.2005 in O.P. No.8740/97 has stated that the Government has no power to exempt individual building applications from the provisions of zoning regulations of the Government approved/sanctioned Master Plans and detailed town Planning Schemes. Subsequently, Government in several orders and letters viz. Orders No.54757/MI/05/LSGD dated 22.12.2005, letter No.2011/R3/2003/LSGD dated 2.1.2006, has directed to stop all procedure for accepting and processing the individual application for exemption from the approved Town Planning Schemes until further orders."

3. Heard Sri.Babu Paul, the learned counsel for the petitioner, Sri. Babu S.Nair, the learned Standing Counsel for the Municipality and Sri.Muhammed Anzar, the learned Government Pleader for the first respondent. The learned counsel would make submissions on the basis of the pleadings raised by their respective parties. The Government Pleader submitted that so long as the judgment of this court in **Sayeesh Kumar v. State of Kerala (2005 (4) KLT 1027)** holds the field, the Government will not be able to give permission to the petitioner to violate the zoning regulations in the master plan. But, as rightly pointed out by the learned counsel for the petitioner, Ext.P1 order was passed by the Competent Authority under Kerala Land Utilization Order as far back as in 26.11.1984 and pursuant to that order, the property has been completely reclaimed and is

presently pakka garden land which means that notwithstanding its inclusion as paddy filed in the master plan the property is a garden land. Construction of farm houses, milk processing plants, which are probably with the concurrence of the Chief Town Planner, in this property are being permitted even as per the master plan. Considering these facts and considering all the reality that the property in question is as of now a garden land, I am inclined to grant relief.

Accordingly, I quash Exts.P3 and P4 and direct the 2nd respondent Municipality to reconsider the petitioner's application for building permit and grant approval to the plan if the same is otherwise in order i.e in accordance with the Kerala Municipality Building Rules. Zoning of the property as paddy field as per the master plan will not be a ground for rejection of plan.

PIUS C. KURIAKOSE,

JUDGE.

dpk